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Decision 05-04-031 April 7, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Re-Examine the Underlying Issues Involved in the Submetering Discount for Mobile Home Parks and to Stay D.01-08-040	Rulemaking 03-03-017 (Filed March 13, 2003)
Order Instituting Investigation on the Commission's Own Motion to Re-Examine the Underlying Issues Involved in the Submetering Discount for Mobile Home Parks and to Stay D.01-08-040.	Investigation 03-03-018 (Filed March 13, 2003)

ORDER MODIFYING DECISION (D.) 04-11-033, AND DENYING REHEARING OF DECISION, AS MODIFIED

The Western Manufactured Housing Community Association ("WMA") has filed an application for rehearing of D.04-11-033 ("the Decision") issued in Rulemaking (R.) 03-03-017 and Investigation (I.) 03-03-018. This consolidated proceeding was initiated to address matters relating to the discount authorized by Public Utilities Code Section 739.5 for mobile home park ("MHP") owners who provide electricity and/or natural gas to their tenants through a submetered distribution system.[1] Primary participants were WMA for the mobilehome park owners, Pacific Gas & Electric Co. ("PG&E"), Southern California Edison Co. ("SCE") and the other

[1] Subsequent reference to a statutory section is to the Public Utilities Code, unless otherwise specified.

major California energy utilities; The Utility Reform Network ("TURN"); and the Latino Issues Forum ("LIF"). Two days of public hearings were conducted in June, 2004. PG&E and SCE have filed responses opposing WMA's application for rehearing.

The purpose of the proceeding was to resolve certain issues relating to the discount, including: whether to adopt a uniform statewide rate structure for the discount and a uniform method for its calculation; whether there are fair and reasonable ways to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service, i.e. the transfer of ownership and responsibility for the submetered system from the MHP owners to the local utility; and other issues not relevant to the application for rehearing.

In its application for rehearing WMA advances two alleged errors in the Decision. First it argues that the Decision incorrectly interprets the term "comparable services" in Section 739.5(a). Second, it contends that Findings of Fact ("FOF") Nos. 45-54 relating to submetered system transfer to directly-metered service by the utility should be deleted because they are inconsistent with each other. We have reviewed its contentions and conclude that WMA has not demonstrated any legal error in the Decision as discussed below. However, we also conclude that the Decision should be modified, for purposes of clarification, regarding the denial of the parties' joint motion for a separate proceeding on the issue of the costs of transferring submetered systems to directly-metered service.

A. Interpretation of the Term "Comparable Services" in Section 739.5(a)

WMA's first contention is that the Decision's definition of "comparable services" is flawed and must be revised. The term appears in Public Utilities Code Section 739.5(a) but it is not specifically defined. This statutory provision requires MHP owners to charge the same rates for electricity and natural gas that would be applicable if the utility served each park tenant directly. It also requires the utilities to

provide electricity and/or natural gas to the MHP owner at a discount. The discount is intended to reimburse the MHP owner for the reasonable average cost of providing submetered service. However, the statute also imposes a cap on the discount. It is not to exceed the average cost that the utility would have incurred in providing comparable services to the tenant directly. Because the parties agreed that the records of the various MHP owners are not adequate to determine their average cost of serving MHP tenants, the average cost the local utility would have incurred in directly serving the MHP tenants determines the level of the discount.[2]

WMA maintains that the Decision errs in the definition of comparable services. It asserts that Conclusion of Law ("COL") No. 11 and FOF No. 33 misinterpret the statutory term "comparable services" by concluding that it applies to a limited set of residential users; namely, in this proceeding, to tenants of mastered-metered MPHs, and not to the general body of the residential customer class. WMA contends that it is erroneous to say that "comparable services" refers to utility service

[2] Section 739.5(a) states as follows:

> "The commission shall require that whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer shall charge each user of the service at the same rate which would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level which will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service." (Pub. Util. Code § 739.5 subd. (a).)

provided only to directly-served MHP customers of the utility. WMA points to the fact that the statute is not exclusively limited to MHP customers since it expressly includes other master-metered customers, such as those in apartment buildings or similar residential complexes. Therefore, relying on the fact that the section references residential customers in a limited range of dwelling types, the necessary conclusion, according to WMA, is that "comparable services" for MPH tenants refers to the costs and rates applicable to the whole residential class.

We do not agree, because WMA's contention has no merit. FOF No. 33 correctly follows the plain and common sense meaning of Public Utilities Code Section 739.5(a) by stating that the section "applies to a limited set of residential ratepayers;" namely insofar as this proceeding is concerned; tenants of MHP parks.[3] The first sentence of the statute makes it clear that the subject involved is gas and electric service provided to tenants of MHPs, and certain other multi-dwelling complexes, by master-meter customers of the local utility company or companies.

Moreover, WMA overlooks the fact that there is no express language in the section referring to the residential customer class as a whole. The phrase in the first sentence of the section "whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants…" establishes that the intended subject is limited to the terms and conditions of utility service between master-meter customers and their tenants. This conclusion is more evident and clear by reading the

[3] FOF No. 33 states as follows: "Section 739.5 applies to a limited set of residential users; tenants of master-metered MHPs, in this case, and does not apply to the general body of ratepayers." (D.04-11-033, p. 35.)

other subsections of Section 739.5. Each of these subsections establishes some rule or requirement relating to the master-meter customer and its users.[4]

Furthermore, this view is consistent with established judicial principles of statutory interpretation. A fundamental rule of statutory interpretation is that the intent of the Legislature should be ascertained so as to effectuate the purpose of the law. (*People v. Hull* (1991) 1 Cal.4th 266, 271.) "In determining the intent [one should] look first to the words of the statute themselves, giving them their usual and ordinary meaning." (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal. 3d 74, 90; see also *Tracy v. Municipal Court* (1978) 22 Cal.3d 760, 764.) Furthermore, the words in a statute "must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear." (*Moyer v. Workmen's Compensation Appeals Board* (1973) 10 Cal.3d 222, 230 (citations omitted); see also, *People v. Baker* (1968) 69 Cal.2d 44, 50 (courts should not insert or delete words in a statute or give a different meaning to the words used).) None of these court decisions provide any support for WMA's construction of the statute. And WMA does not provide any legal authority in support of its preferred interpretation.

To adopt WMA's position, we would need to delete the words "directly to the users of the service" in the last sentence of Section 739.5(a) and insert the words "to the residential class of customers". In our opinion, such an interpretation is well beyond the reasonable bounds of the above stated principles of statutory interpretation.

Likewise, we do not agree that COL No. 11 is erroneous.[5] It construes the term "comparable services" in the statute as referring to utility service provided

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[4] Subsection (b) of Section 739.5 deals with the distribution of utility rebates between master-meter customers and their tenants or users; subsection (c) concerns provision of public safety information to such users; subsection (d) imposes maintenance responsibilities for the sub-metered facilities on the master-meter customer; and subsection (e) requires itemized billing from the master-meter customer to its users.

[5] COL No. 11 states as follows: "The term "comparable services" refers to services provided to directly-served MHP customers of the utility, as opposed to residential ratepayers as a whole."

directly by the utility to MHP tenants. WMA would construe it to refer to services provided to all residential customers. But such a construction overlooks the nature and purpose of the statute. As we explained above, the phrase in the second sentence of Sec. 739.5(a) "comparable services to the users of the service" can reasonably only refer to the master-meter MHP tenants, who are in fact the users of the service covered by the statute. This sentence simply prescribes how the master-meter discount is to be determined. It clearly calls for the Commission to utilize the master-meter customers' cost of service to set the discount allowed them; but that the discount cannot exceed the utilities' cost to provide those same users service directly. Utilizing the costs of the utility to serve its entire residential class to set the discount for submeter service to MHP tenants would distort and undermine any reasonable effort to calculate a realistic discount.[6]

B. Modification of D.04-11-033 For the Purpose of Clarification

Next, WMA asserts that FOF Nos. 45-54 should be deleted from the Decision. These findings relate to the development of fair and reasonable ways to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service. Although evidence was admitted on this subject, we concluded that the "issue was not fully developed in this proceeding" (See D.04-11-033, p. 37 [Finding of Fact No. 56.].) Furthermore, in COL No. 22 we explained that, since addressing this issue at this time would substantially extend the proceeding, the Commission should not consider it further. No ordering paragraph ("OP") addressed this issue, except that OP No. 13 denied a motion filed by the parties to establish a new

[6] The extent of the distortion is illustrated in PG&E's Response to WMA's application. It notes that submetering discount for apartment buildings is $0.10579 per space per day, but that the MHP submetering discount is $0.34300 per space per day; and that under WMA's position the discounts would be set at the same level.

proceeding to consider it[7]. Instead, the Decision declared that the issue would be considered in a new proceeding, "only as staffing and resources allow." (D.04-11-033, p. 21.)

Nevertheless, WMA submits that these findings should be deleted because they generally support the utilities' positions on system transfers. In particular, WMA refers to FOF Nos. 51 and 52 which find that a transfer of a submetered system would not lead to significant potential increased revenues for the utility, but then declares in FOF No. 52 that the utility would receive the discount revenues it would no longer have to pay the MHP owner. Finally, WMA cites FOF No. 53 as further confusing this subject because it states there is "no apparent benefit" to the utility shareholders resulting from a transfer.[8]

WMA expresses concern that these findings raise the issue whether the revenue stream from the discount is sufficient to cover the costs of owning and operating the submetered system. Since, our Decision does not state anywhere that it is resolving such an issue, these three findings, which are based on dicta in the text, look like actual determinations. Thus for purposes of clarification, these findings of fact are deleted and the issue is reserved for a future proceeding.

Further, although the Decision expressly notes that this issue "was not fully developed in this proceeding," and states that it will be considered in a future

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[7] The Joint Motion stated that this issue is very complex and could require additional weeks of hearings. (Motion of Joint Parties to Establish Separate Proceeding, filed Jan. 16 2004, p. 4.)

[8] The three findings state the following:

51. There is no significant potential for increased utility revenues because of such a transfer because the utility already provides the same amount of electricity or natural gas to the MHP owner at the master-meter as would subsequently be provided directly as a result of the transfer.

52. The fact that the utility would no longer have to pay the discount is offset by the costs, related to providing service directly, that were previously provided by the MHP owner.

53. Since there is no apparent benefit to the stockholders resulting from the transfer, there is no apparent reason why they should bear any of the costs.

proceeding, we may have created an ambiguity by the use of the term "only as staffing and resources allow" in the text. We will clarify D.04-11-033 by revising this language in order to avoid any possible incorrect impression that consideration of this issue will be unduly delayed.

Therefore **IT IS ORDERED** that:

1. Findings of Fact Nos. 51, 52, and 53 of D.04-11-033 are deleted.

2. The sentence on page 21 of D.04-11-033 which states "We will consider a new proceeding to address this issue only as staffing and resources allow" is modified to read as follows: "We will consider this issue in a future proceeding, rather than delay the instant proceeding as proposed by the Joint Motion".

3. Ordering Paragraph No. 13 of D.04-11-033 is modified to read as follows:

> "13. The motion, filed by the active parties on January 16, 2004, to establish a new proceeding to consider the issue of whether there are fair and reasonable ways to mitigate the cost to MHP owners of converting existing submetered systems to directly-metered service, is denied. This issue is reserved for consideration in a future proceeding."

4. Rehearing of D.04-11-033, as modified, is denied.

5. This proceeding is closed.

This order is effective today.

Dated April 7, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners